

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 667 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHARWAD POPATBHAI DEVABHAI

Versus

STATE OF GUJARAT

Appearance:

MR ASHISH M DAGLI for Petitioner

MR. JOSHI, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/11/1999

ORAL JUDGEMENT

#. The petitioner has approached this Court with this petition under Article 226 of the Constitution, challenging the order of externment passed by Sub-Divisional Magistrate, Dhrangadhra on 22nd April, 1999, externing him from Surendranagar, Rajkot (Rural) and Ahmedabad (Rural) districts in exercise of powers under Section 56(a) of the Bombay Police Act, 1951.

#. A show cause notice came to be served upon the petitioner by the externing authority as required under Section 59 of the Bombay Police Act. It is disclosed in the notice that the petitioner is found to be indulged in illegal activities involving him in eve-teasing, extortion, intimidation, etc. It is also stated in the notice that two offences are registered against him covered under Chapter XII, XVI and XVII of Indian Penal Code and the petitioner was, therefore, called upon to appear before the externing authority on 30th July, 1998 at 12.00 noon to show cause notice why he should not be externed from Surendranagar and other districts stated above.

#. After the proceedings, the externing authority passed the impugned order Annexure-C.

#. An appeal was preferred by the externee under Section 60 of the Bombay Police Act and the same came to be decided on 21st June, 1999 in the nature of dismissal of the appeal and confirmation of the order passed by the Sub-Divisional Magistrate, Dhrangadhra.

#. The petitioner has approached this Court challenging the abovesaid orders on various grounds. The Mr. A.M. Dagli appearing for the petitioner has restricted his arguments to the following points :-

5.1 The notice under Section 59 narrates the incidents but the narration is vague and not sufficient enough to afford an opportunity to the petitioner to explain the circumstances as the same does not disclose the area of incident and time of incident.

5.2 Neither the notice nor the order disclose the reason for externing the petitioner from other districts, namely, Rajkot (Rural) and Ahmedabad (Rural) where admittedly the petitioner is not alleged to have operated.

#. The respondents have not filed any affidavit in reply.

#. Mr. Dagli has pressed into service decision of this Court rendered in Mustufamiya Pirsahedmiya Saiyed v. State of Gujarat, 1999(1) GLH 913 in support of his arguments. He has also pressed into service decision in case of Dafer Rahman Zarar v. State of Gujarat & Ors., 1999(1) GLH 425 and submitted that the order in question is bad for non-application of mind.

#. Mr. Joshi, learned Additional Public Prosecutor, has opposed this petition. His argument is that if the notice is perused, it broadly indicates the details of incidents narrated by the witnesses and relied upon by the externing authority. He submitted that, if more details are given, it would disclose the identity of the witnesses who are otherwise not prepared to publicly depose against the petitioner and, therefore, the order cannot be said to have been vitiated.

8.1 He submitted further that the externing authority has recorded reasons for externing the petitioner from adjoining districts. It is recorded by the externing authority that, if the petitioner is not externed from the adjoining districts, in these days of speedy communication, the petitioner may continue his operations from those districts and, therefore, the grounds raised by the petitioner cannot be said to be sufficient to vitiate the order in question and the petitioner may, therefore, be dismissed.

#. Considering the first contention that is raised by Mr. Dagli, a perusal of the notice indicates that in the clauses containing the 2nd and the 4th accusations, the only description that is given about a stationery shop or a Farsan shop (Namkeen shop) at Dhrangadhra. A notice can be taken of the fact that Dhrangadhra is a reasonably large town and, therefore, it cannot be said that area of operation is disclosed in the notice. So far as time aspect is concerned, the argument advanced by Mr. Dagli cannot be accepted but the notice does not disclose the area of operation or the area where the incident has occurred. In this regard, a Division Bench decision of this Court rendered in the case of Rajput Ranjitsing Jatubha v. Vinay Vyas, as reported in 27(1) GLR 478 may be profitably considered. The Division Bench, in that decision, held that a notice to show cause for action under Section 56 must disclose the period when and the area where the alleged nefarious activities are carried on. Absence of these particulars vitiates the notice and the entire proceedings. In this view of the matter, the notice cannot be said to meet with the requirement of a valid notice which would provide the opportunity to the petitioner as contemplated under Section 59 of the Bombay Police Act.

##. On other ground also, the petition deserves to be allowed. The externing authority has recorded that the petitioner requires to be externed from adjoining districts, namely, Rajkot (Rural) and Ahmedabad (Rural). The order is tried to be window-dressed by dressing it

with reason "that in these days of speedy transport, the petitioner may take advantage of the speedy transport and may operate by staying in adjoining districts" and therefore, he is required to be externed from those districts as well. It is not the case of the externing authority that the externee was operating in or from other districts earlier. The only reason that is recorded is that the externee is likely to make use of speedy transport available and operate from those districts. The respondents have not filed any affidavit in reply. There is nothing on record to indicate as to how and in what manner the externee could have made use of the transport, which transport is available and what are the reasons for the apprehension expressed by the externing authority? In this regard, this Court in the case of Dafer Rahman Zarar (supra) observed:

"8. The Externing Authority had issued show-cause notice to the petitioner probably in respect of his activities confined in village Dhrol, district Jamnagar but he has chosen to pass the order of externment against the petitioner from four districts, viz. Jamnagar, Rajkot, Junagadh and Kachchh. No reason has been given by the Externing Authority why the petitioner had been externed from four districts. The only observation on this point in the judgment of the Externing Authority is as under:

'...if he is externed only from the Jamnagar District, then in this advance mechanical age, it is likely that he will continue his aforesaid activities. Therefore, it is proper to extern the aforesaid person from Jamnagar District and the nearby districts, i.e. Rajkot, Kachchh and Junagadh.'

From the above observations, it is clear that no reason has been given except advance mechanical age which is yet to be understood only by the Externing Authority and not by the Court. This has also rendered the order of the Externing Authority invalid."

##. In this view of the matter, the order of externment is found to be suffering from two defects, (1) that no reason is given for externing the petitioner from adjoining districts except that the petitioner is likely to make use of speedy transport and operate from the adjoining districts; and (2) that the notice does not disclose the area or location of the incidents relied

upon by the external authority and, therefore, the order deserves to be quashed and set aside by allowing this petition.

##. In the result, this petition is allowed. The order of externment dated 22th April, 1999 passed by Sub-Divisional Magistrate, Dhrangadhra, against the petitioner is hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]

gt